

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

W.P.No.18463 of 2019

N.Sakthivel

...Petitioner

Vs

1. The Chairman,
Cooperative Election, West Zone Committee,
Coimbatore, Coimbatore District.
 2. The State Election Commissioner,
Cooperative Elections,
Kamadhenu Super Market Building,
No.273, Scheme Road, Subburaya Nagar,
Teynampet, Anna Salai, Chennai - 18.
 3. The District Election Officer/
Deputy Registrar of Coop.Societies,
Salem Circle, Salem, Salem District.
 4. The Election Officer/Senior Inspector (Audit),
S.S.111, Salem and Namakkal District Cooperative Societies,
Employees Cooperative Thrift and Credit Society,
No.27/10, Chinnayeri Vayalakadu 1st street,
Pallapatti, Salem - 636 009.
- ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the 2nd respondent to refer the petitioner's representation dated 19.04.2018 to the West Zone Committee the 1st respondent herein and dispose the same on merits.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.Sivakumar
for Mr.M.S.Palanisamy for R2
Mr.C.P.Shanmugasundaram for R3&R4

O R D E R

The writ petitioner herein being a member of the 4th respondent Society, filed his nomination to contest in the election, for its Board of Directors. As per the election

schedule commenced by the Election Commission, the date of nomination was fixed as 31.03.2018. After scrutiny of the nomination, the 4th respondent Election Officer ought to have conducted the election, instead, rejected the nomination of the petitioner and four others, he has declared seven candidates as elected members.

2. When the petitioner contacted the 4th respondent, he informed him that, election result was declared as per the dicta of the higher officials. The petitioner made a representation to the Election Commission on 19.04.2018, through email as well as through post. Meanwhile, he has also approached this Court by way of writ petition in WP.No.10377 of 2018, to direct the 2nd respondent namely, District Election Officer to cancel the election and conduct a fresh election taking the nomination of the petitioner into account. In the said writ petition, this Court has passed the following orders:-

"4. The learned Special Government Pleader appearing for the respondents has submitted that since the names of the elected candidates have been declared, the remedy open to the petitioner is to approach appropriate forum under Section 90 of the Tamil Nadu Co-operative Societies Act.

5. In view of the same, the writ petition is dismissed. However, it is open to the petitioner to move the appropriate forum within 60 days from the date of declaration of the candidates in the election. No Costs."

3. Accordingly, when the petitioner approached the Deputy Registrar and preferred his appeal under Section 90 of the Tamil Nadu Co-operative Societies Act (herein after referred to as "the Act"), the Deputy Registrar of Cooperative Society has rejected his appeal on 18.07.2018, stating that, under Section 90 of the Act and Rule 107, the time prescribed for preferring appeal is 60 days, whereas, the appeal preferred by the petitioner is belated by 16 days. Hence, on limitation ground, his appeal was dismissed.

4. Meanwhile, taking in to consideration of rampant violation of election Rule, this Court constituted a Special Committee to look in to the allegation and compliance be placed between 16.09.2018 and 30.09.2018. Since the petitioner has approached the Election Commission on 19.04.2018, he has also preferred his appeal before the Special Committee. However, the Special Committee taking note of the fact that, the petitioner has exhausted the statutory remedy of preferring appeal under

Section 90 of the Act and the same is being dismissed on the ground of limitation. The petitioner is directed to pursue his further appeal as per the statute and cannot approach the Special Committee which has been constituted as a one time measure, pursuant to the direction of the Division Bench. The Special Committee has also given liberty to the petitioner that if at all, he needs any clarification regarding an order passed by this Court on 25.04.2018 in W.P.No.10377 of 2018, he may approach this Court.

5. In the said circumstances, the petitioner has filed the present writ petition stating that, the Election Officer has committed a gross violation of election Rules, by not considering the nomination of the petitioner and ordering polling for the post of Board of Directors. Though, proper and valid nomination was filed by him as well as four others, without taking their nomination in to account, the second respondent has declared seven members as unopposed. When there is an appeal under Section 90 of the Act was preferred, it was dismissed on the ground of limitation without taking in to consideration the delay in approaching the High Court in filing W.P.No.10377 of 2018.

6. The petitioner herein has been directed by this Court to approach the Deputy Registrar under Section 90 of the Act, pursuant to the submission made by the learned Special Government Pleader appearing for the respondent. While directing so, this Court has pointed out that, such a representation should be made within 60 days from the date of declaration of the candidates in the election. By the time when this order was passed on 25.04.2018, already 60 days limitation has crossed. Either this Court should have mentioned the time taken for in pursuing the writ petition should be excluded or should have been given time for the petitioner to workout his remedy before the statute. Since, such time has not been specified in the writ petition, the Deputy Registrar of Cooperative Society, Salem, has rejected the appeal as barred by limitation.

7. In the given circumstances, it will be a futile exercise to send the petitioner again to agitate his cause under Section 90 of the Act, instead having constituted the Special Committee to look in to the mass irregularity happened during the Cooperative election, the Special Committee itself can look in to the complaint of the petitioner and pass orders.

8. With these clarifications, the Writ Petition stands disposed of. No Costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

Pkn.

To

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Pallapatti, Salem - 636 009.

+1 cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.60537

+1 cc to Mr.C.Prakasam, Advocate, S.R.No.60284

+1 cc to the Spl. Government Pleader (Co-op), S.R.No.60206

W.P.No.18463 of 2019

NRL (CO)
SSM(20/08/2019).

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